ROSARIO R. TINA,
JESUS G. TINA, Pro se
863 Glencoe Drive
San Diego, CA 92114
Phone number 619-813-7844

FILED
08 JUL -1 AM 11:43
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

United States District Court

~~IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA~~

~~COUNTY OF SAN DIEGO~~

Southern District of San Diego

JESUS TINA, ROSARIO TINA, Pro se Plaintiffs, vs. HOME CAPITAL FUNDING, AMERICAN HERITAGE FINANCIAL,COUNTRYWIDE HOME LOANS,WELLS FARGO BANK DBA AMERICA'S SERVICING COMPANY, RICARDO FARIAS and MARIA FARIAS, Defendants.	Case No. '08 CV 1167 JM NLS **VERIFIED COMPLAINT FOR FRAUD, DECEPTIVE AND UNFAIR TRADE PRACTICES AND FOR DECLARATORY AND INJUNCTIVE RELIEF**

COME NOWS the Plaintiffs, ROSARIO R. TINA, AND JESUS G. TINA, Pro Se, and sues Defendants, HOME CAPITAL FUNDING, AMERICAN HERITAGE FINANCIAL, COUNTYWIDE HOME LOANS,WELLS FARGO BANK DBA AMERICA'S SERVICING COMPANY, and RICARDO FARIAS and MARIA FARIAS, and as grounds therefore would state as follows:

1. This is an action for fraud in the inducement, for money

damages in excess of $25,000.00 within the jurisdiction of this Court, and for Deceptive and Unfair Trade Practices in violation of California Business and Professional Code 17200 and for Declaratory and Injunctive Relief.

2. At all times material hereto, Plaintiffs was and are natural persons residing in San Diego County, California.

3. At all times material hereto, Defendant HOME CAPITAL FUNDING (hereinafter "Home Capital") was a corporation doing business in San Diego County, California.

4. At all times material hereto, Defendant AMERICAN HERITAGE FINANCIAL (hereinafter "American Heritage") was a corporation doing business in San Diego County, California.

5. At all time material hereto, Defendant COUNTRYWIDE HOME LOANS (hereinafter "Countrywide") was a corporation doing business in San Diego County, California.

6. At all times material hereto, Defendant Wells Fargo Bank d/b/a AMERICA'S SERVICING COMPANY (hereinafter "Wells") was a banking corporation doing business in San Diego County, California.

7. At all times material hereto, Defendants RICARDO FARIAS and MARIA FARIAS were the prior owners and sellers of the subject property located in San Diego, California, and are residents of the state of Georgia.

FIRST CAUSE OF ACTION-FRAUD

8. Plaintiffs realleges the allegations contained in paragraphs 1 through 7 and incorporates same by reference into this Cause of Action.

9. On or about September 16, 2005, Plaintiffs and Defendants entered into a consumer credit mortgage loan transaction, for the purchase of the property at 863 Glencoe Drive, San Diego,California.

10.The mortgages consisted of a first mortgage in the principal amount of $342,000.00 and a second mortgage in the principal amount of $85,500.00. Further, all Defendants represented that one of the bedrooms, which had been converted from a garage, had been built with proper permits and was a part of the total under air and heat square footage of the home. Defendants knew, or should have known that said representations were false, and that the bedroom conversion from the garage had been added without proper building permits.

11.The subject mortgages were subsequently assigned, transferred or assumed by Defendant Countrywide and Wells Fargo Bank d/b/a America's Servicing Company. Plaintiffs if unsure as to how and when such assignments or transfers were accomplished, and Plaintiffs is unsure at this point as to the true owner and holder of the promissory note.

12.Plaintiffs subsequently learned after the closing that the bedroom conversion was not built with proper building permits and was advised by the City of San Diego Neighborhood Code Compliance Division that the room addition added without proper permits to the property would have to be demolished.

13.Defendants engaged in wrongful conduct including but not limited to fraud in the inducement, misrepresentation of a material fact, upon which Plaintiffs justifiably relied to their detriment, and which proximately caused damage and injury to Plaintiffs.

14.As a result of the foregoing fraudulent representations that the bedroom had been built with proper permits when in fact in had not, Plaintiffs was advised by the City of San Diego that he could not rent or lease the unlawful additions to the property and that he would have to vacate the property.

15. As a direct and proximate result of Defendants actions, Plaintiffs has been damaged, including but not limited to the loss of the purchase price of the property, the benefit of the bargain, loss of the use of the property, loss of the fair market rental value of the property, and other damages in excess of $25,000.00, including damage to Plaintiffs's credit and other financial and monetary damages.

WHEREFORE, Plaintiffs demands Judgment against Defendants for fraud, for actual damages as proven at trial, for consequential damages, for costs of this action, and for such other and further relief as the court deems equitable, appropriate and just.

SECOND CAUSE OF ACTION-DECEPTIVE AND UNFAIR TRADE PRACTICE; INJUNCTIVE RELIEF

16. Plaintiffs re-alleges the allegations contained in paragraphs 1 through 15 and incorporates same by reference into this cause of action.

17. The fraudulent misrepresentations of Defendants that the converted bedroom had been properly permitted when in fact in had not, which resulted in Plaintiffs being advised that he could not rent or lease the property and further that he would have to vacate, caused substantial financial damage to Plaintiffs resulting in the mortgage payments going into arrears.

18. Defendants Home are seeking a non-judicial foreclosure of the subject property which will further damage Plaintiffs 's credit and will cause him additional financial and reputational damages. Since Plaintiffs is unsure as to the identity of the true owner of the subject notes and security interests, Plaintiffs request that the Court order Defendant or Defendants to produce the original notes signed by Plaintiffs .

19.Plaintiffs seeks a declaration from this Court that the actions of defendants constitute Deceptive and Unfair Trade Practices in violation of California Business and Professional Code 17200.

17. Plaintiffs requests the issuance of a Preliminary Injunction/Temporary Restraining Order pursuant to California Business and Professions Code Section 17203 to enjoin and restrain the Defendants from continuing to engage in Deceptive and Unfair Business Trade Practices, as more fully set forth in this Complaint and Plaintiff's accompanying Declaration.

20.The Deceptive and Unfair Business Trade Practices engaged in by Defendants Home Capital Funding and American Heritage Financial, Countrywide and Wells Fargo Bank d/b/a America's Servicing Company, also include, but are not necessarily limited to, stating an incorrect amount due and owing, engaging in a willfully oppressive sale, collecting improper closing and other fees, making incorrect tax and escrow impounds, misapplication of Plaintiff's payments, and other violations at the closing held on or about September 16, 2005.

21. Until such time as Defendant and the mortgage loan servicer provide a detailed analysis of the amounts it contends is due and owing on the note and deed of trust at issue, and provides a breakdown of the amounts due and owing on the note and deed of trust, Plaintiffs requests the entry of an injunction to enjoin Defendant's actions pursuant to California Business and Professions Code Section 17203.

22.Plaintiffs will be irreparably injured if the parties are not enjoined in that they will suffer complete loss of their unique real property, which is not capable of being duplicated, loss of all of their equity, loss of the right of possession and to live in the property, loss of rental income, loss of their right of quiet enjoyment, would be uprooted and have their family uprooted from their community, and would suffer great personal injury, including defamation of their credit, the infliction of emotional distress upon Plaintiffs, and suffers other damages personal to Plaintiffs.

23.Any potential harm to Defendants is slight when compared to the damage to be suffered by Plaintiffs and the equities balance and tip heavily in favor of Plaintiffs.

24.Plaintiffs has no other adequate remedy at law.

25. Plaintiffs seeks entry of a preliminary injunction on an ex parte basis without notice to the named Defendant in that, were the defendants given advance notice of these proceedings they would in all likelihood seek to accelerate the damage Plaintiffs seeks to apprehend.

26.Plaintiffs has a good likelihood of prevailing on the merits of claim due to the nature of the fraudulent conduct of the Defendants.

27.Plaintiffs requests that the restraining Order be issued without bond as Plaintiffs is unable to afford a bond of any kind or type.

WHEREFORE, Plaintiffs respectfully prays that this Honorable Court grant a Preliminary Injunction/Temporary Restraining Order to enjoin and restrain Defendants from further Deceptive and Unfair Trade Practices and further grant the Order without bond, and grant such other and further relief as the Court deems equitable, appropriate and just.

VERIFICATION

I, ROSARIO R. TINA, and JESUS G. TINA, the undersigned Plaintiffs hereby verify that we have read the foregoing Complaint and that under penalty of perjury swear that the facts and allegations contained therein are true and correct.

Dated this 30 day of June, 2008.

ROSARIO R. TINA,

JESUS G. TINA
Plaintiffs
Address: 863 Glencoe Drive
San Diego, CA 92114
Phone 619-813-7844

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

152452 - TC
* * C O P Y * *
July 01, 2008
11:50:12

Civ Fil Non-Pris
USAO #.: 08CV1167
Judge..: JEFFREY T MILLER
Amount.: $350.00 CA

Total-> $350.00

FROM: JESUS & ROSARI TINA
VS.
HOME CAPITOL FUNDING

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Jesus Tina & Rosario Tina
863 Glencoe Drive
San Diego CA 92114

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS Home Capital Funding, American Heritage Financial, Countrywide Home Loan, Wells Fargo Bank, Ricardo Farias & Maria Farias

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) 08 CV 1167 JM NLS
DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- [ ] 1 U.S. Government Plaintiff
- [X] 3 Federal Question (U.S. Government Not a Party)
- [ ] 2 U.S. Government Defendant
- [ ] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	[X] 1	[ ] 1	Incorporated *or* Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated *and* Principal Place of Business In Another State	[ ] 5	[ ] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability
- [ ] 196 Franchise

REAL PROPERTY
- [ ] 210 Land Condemnation
- [X] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury

PERSONAL INJURY
- [ ] 362 Personal Injury - Med. Malpractice
- [ ] 365 Personal Injury - Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing/ Accommodations
- [ ] 444 Welfare
- [ ] 445 Amer. w/Disabilities - Employment
- [ ] 446 Amer. w/Disabilities - Other
- [ ] 440 Other Civil Rights

PRISONER PETITIONS
- [ ] 510 Motions to Vacate Sentence

Habeas Corpus:
- [ ] 530 General
- [ ] 535 Death Penalty
- [ ] 540 Mandamus & Other
- [ ] 550 Civil Rights
- [ ] 555 Prison Condition

FORFEITURE/PENALTY
- [ ] 610 Agriculture
- [ ] 620 Other Food & Drug
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 630 Liquor Laws
- [ ] 640 R.R. & Truck
- [ ] 650 Airline Regs.
- [ ] 660 Occupational Safety/Health
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Mgmt. Relations
- [ ] 730 Labor/Mgmt.Reporting & Disclosure Act
- [ ] 740 Railway Labor Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- [ ] 462 Naturalization Application
- [ ] 463 Habeas Corpus - Alien Detainee
- [ ] 465 Other Immigration Actions

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [ ] 840 Trademark

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- [ ] 400 State Reapportionment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 480 Consumer Credit
- [ ] 490 Cable/Sat TV
- [ ] 810 Selective Service
- [ ] 850 Securities/Commodities/ Exchange
- [ ] 875 Customer Challenge 12 USC 3410
- [ ] 890 Other Statutory Actions
- [ ] 891 Agricultural Acts
- [ ] 892 Economic Stabilization Act
- [ ] 893 Environmental Matters
- [ ] 894 Energy Allocation Act
- [ ] 895 Freedom of Information Act
- [ ] 900Appeal of Fee Determination Under Equal Access to Justice
- [ ] 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- [X] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from another district (specify)
- [ ] 6 Multidistrict Litigation
- [ ] 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**): 15 USC 1601 Et seq
Brief description of cause: Fraud TILA

VII. REQUESTED IN COMPLAINT: [ ] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $**
CHECK YES only if demanded in complaint:
JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 7-1-2008 SIGNATURE OF ATTORNEY OF RECORD x Rosario Tina

FOR OFFICE USE ONLY

RECEIPT # 152452 AMOUNT $350 APPLYING IFP JUDGE MAG. JUDGE

CAR 7/1/08

CR